

March 5, 2019

Judge Joseph Bianco  
U.S. Federal Court House  
Eastern District of NY  
100 Federal Plaza  
Central Islip, NY 11722

**RE: John Kaiser letter filed February 28, 2019 (Document 628)**

Dear Judge Bianco:

The last seventeen (17) years, since our first (1<sup>st</sup>) investments thru Ken Jowdy (circa 2002) have seen its share of amazing revelations. John Kaiser's February 2019 letter of Jowdy's continued corruption has risen to the top of the proverbial "heap".

Kaiser's February 2019 letter shocks the conscience with new evidence and revelations that were presented by the government as "phony", "bogus", and "supposed" during trial. Kaiser's full support of Jowdy's innocence at trial corresponded with Kaiser's paychecks from Jowdy. Now, Kaiser has been fired and has revealed a series of new evidence that amazes Kenner. Kaiser has reversed and contradicts many of his trial statements in the new, full-disclosure exposé.

The Court now hears new evidence and gross revisionary claims by Kaiser, as:

- Kaiser exposes Jowdy in 2019 but cannot get FBI help,
- The government is NOT following the money,
- Kaiser claims he owns Baja Ventures 2006 with a fabricated and forged document (and Jowdy's help in 2014),
- Kaiser claims Kenner "gave" Jowdy 50% in Cabo (which never occurred), and
- Kaiser asserts that Jowdy will never pay Kenner and Kenner investors...

**The first question Kaiser fosters is: "Who is watching the watchers?"**

Kaiser is now begging to expose Jowdy. It highlights an unexplainable 2017 statement from the Cabo investors' attorney (representing a subset of CSL Property investors, according to Peca's February 2019 letter). The attorney made specific statements via email (the year Kaiser was fired) to his clients (including Michael Peca) related to the alleged Jowdy investigations. The attorney claimed, as follows:

*"Finally for those of you who are convinced that Jowdy is guilty of some crime...I simply note that the circumstances surrounding the Del Mar Project and the Cabo Project (and the relationship between Kenner and Jowdy) has been exhaustively investigated over several years by the FBI, SEC and the U.S. Attorney for the EDNY."*

Who told the investors' attorney this information? Kaiser had five (5) working years of knowledge, as is now stating it is completely untrue, related to the Jowdy frauds and

plans that *"the hockey guys will never see a dime' because they said he [Jowdy] was a crook".*

- Kaiser exposed Jowdy because he lost his "keep your mouth shut-conspiratorial" job (like Berard).

The only logical source for the attorney's "specific" ***mis***-representation is thru the FBI case agent (Galioto). Kaiser's newfound epiphany begs the Court to ask, why was the 2013 Indictment brought in the first place with Kaiser, Berard and Jowdy working in tandem with the FBI case agent – but now – Kaiser cannot get a hold of the ***"watchers"***?

- Is this about justice, or is it about avoiding prosecution of Jowdy who defrauded Kenner and Kenner investors since 2002?

**No one wants to follow the money...**

The bank records prove without argument that Jowdy received 100% of the funds in question for Diamante Cabo san Lucas ("DCSL") as ***"clean"*** deposits having nothing to do with the 2004 personal loan to Jowdy from the Hawai'i partners:

**[DCSL "clean" equity contributions]**

- *\$4.1 million from **Baja Ventures 2006** – and*
- *\$2.3 million from **CSL Properties**.*

**Yet -- Jowdy diverted equity deposit funds unlike Kenner and Kenner investors intended or authorized...**

If Kenner was complicit, where are the capital account funds from the Hawai'i loans listed? Nothing is in Kenner's name, anywhere. Nothing is traceable to Kenner capital accounts, either. **None of the Jowdy loan funds benefitted Kenner, in any way.**

- It may be the definition of the worst "fraud" in history.

Jowdy's actual documented embezzlements and diversions cannot subject Kenner or Kenner investors to co-mingled fund issues (for forfeiture); fully under Jowdy and his management cabal's control behind their ***"Chinese Wall"***. Jowdy is not a Kenner co-defendant or co-conspirator; *nor was it ever alleged thru trial.*

Jowdy received well in excess of the necessary ***"clean"*** money for Baja Ventures 2006 and CSL Properties, LLC (but much under-represented by Jowdy on the 2006 operating agreement for DCSL). Jowdy's ***"Wonka"***© accounting and diversions cannot place blame with Kenner and Kenner investors for what Jowdy did not register in the final capital accounts on the DCSL operating agreement in March 2006.

Kaiser has now decided to “move the goalposts” regarding all the information he delivered at trial as the government's primary, critical witness, as laid out by the NY Daily News on arrest day, November 13, 2013.<sup>1</sup>

Kaiser has apparently been part of the Jowdy-led scheme to “silence” Kenner (with Galioto and Berard), and end Kenner's attempts to fix a wide range of frauds by Jowdy, Bill Najam (his brother-in-law), Tom Harvey (his NY attorney) and other Jowdy-cabal members, which Kaiser and Berard gladly joined in 2012, for a conspiratorial paycheck.

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<sup>1</sup> See NY Daily News Article: ***“Former NHL player Bryan Berard and ex-cop [Kaiser] help feds nail two Arizona men in massive fraud”***, November 13, 2013, 1:33pm

*“...bringing to a close a long and difficult investigation that relied heavily on the determination of former Ranger and Islander Bryan Berard and New York and Long Island police officer, John Kaiser, along with NY-based FBI agent Matt Galioto”*

This “massive fraud” produced:

- A **Global Settlement Fund** with no mismanaged proceeds with the Constantine-Gonchar “side-deal” known at all times to the government (a.k.a. – NO LOSS),
- A **Hawaiian** loan to Jowdy that 19 Hawai'i investors signed off repeatedly as “knowing” lawsuit Plaintiffs (3 times) – and three (3) Hawai'i-Mexico partners glibly explained to a SDNY Grand Jury of their “group” knowledge of the Jowdy loans – resulting in a collectible \$31 million loan (that the FBI and government will not assist Kenner and Kenner investors recover – to Jowdy's benefit) (a.k.a. – NO LOSS), and
- A fully vetted series of **Eufora** private stock sales (by independent attorneys) that multiple investors confirmed their knowledge of – and
  - **Their own “banking” transfer protocols (from Charles Schwab) would not have allowed without 100% transparency and the clients' specific verbal sign-off** (a.k.a. NO LOSS), yet

Kaiser is now outlining years of revisionary criminal deception by Jowdy – as a Jowdy “insider” (a.k.a. co-conspirator of Jowdy's for his contributing period of employment, 2012-2017). Kaiser's confessions implicate him with Jowdy and others.

But – Kaiser cannot get the attention of the very same FBI case agent who zealously indicted and arrested the person [Kenner] who was pursuing Jowdy thru 2013 for the investor group -- and with all of the real evidence.

***Apparently – Jowdy is off-limits.***

**Kaiser was fully repaid from ALL private deals with Kenner<sup>2</sup> (empirically proven with government records – not hearsay)...**

Regarding Kaiser, 100% of his and Kenner's banking and financial records confirm that he was fully repaid by the Hawai'i Partners for his friends & family 2005, \$1 million loan and his friends additional \$100,000 loan just prior to the Lehman Brothers August 2006 closing.<sup>3</sup>

Kaiser's trial testimony about "back pay" and "expenses" of \$816,000 is another fraud on the EDNY. (Tr.1413-1414).<sup>4</sup> Kaiser's 2006 and 2007 IRS tax records will prove he NEVER reported any such income. Kaiser will never be able to produce even a reasonable subset of receipts for the alleged "expenses" to "true-up" the balance of the \$816,000 cash he received in August 2006 – and kept from his friends & family. Kaiser's Equity Transfer Agreement with Kenner for \$360,000 (in evidence) made up the

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<sup>2</sup> Kaiser and the government made other false claims that Kaiser was not repaid millions from a 2007 California real estate project with Kenner as the basis for Counts 2, 3 and 4. The Kaiser-Kenner banking records in evidence prove that Kaiser was **more than completely re-paid** from the deals with Kenner. Thus, the friends & family money Kaiser borrowed for the California deal in 2006-07 has also been embezzled by Kaiser, unknown to his friends & family who fronted the money to him for his share of the California deal. **This is another fraud Kaiser is trying to blame on Kenner** – but the banking records disprove his every claim. This full California repayment runs in contradiction to the basis for the Government's Count 2, 3 and 4 allegations.

<sup>3</sup> Kenner and Kaiser exchanged thousands of texts between 2007 and 2012. There is **not one (1) text message** where Kaiser asks Kenner to return "any" money that he believes he is "owed" by Kenner from "any" project nor "any" claims about the Hawai'i loans still being owed at any time – even when fighting in 2011-2012, **none**.

[Kaiser told the 2009 arbitration panel]:

*Q: Even now, sitting here in May 2009, is there anything you've uncovered, as someone who obviously knows how to investigate, that Mr. Kenner has done anything inappropriate throughout these [Hawai'i] transactions?*

**A [Kaiser]: NO**

*Q: Not one complaint?*

**A [Kaiser]: None.**

It does not comport with Kaiser's alleged claims that millions were diverted by Kenner from his friends & family Hawai'i and California funds. **All of the Kaiser friends & family investments and loans were fully repaid by the date of the Kaiser arbitration testimony -- fully documented in evidence and irrefutable.**

<sup>4</sup> Transcript pages are from the 2015 EDNY trial.

balance of the "paid out" \$1,176,000 in August 2006 from Na'alehu Ventures 2006 to Kaiser (fully re-paying Kaiser's friends & family loans). **The records are irrefutable.**

Kaiser's problem is that it is documented that he stole several millions of dollars from his friends & family and never repaid them when he was re-paid. The repayment funds are documented. And -- Kaiser stole the funds. **Kenner renews his request to have the Court subpoena:**

1. *Kaiser's 2006 and 2007 IRS taxes for "in camera" review to confirm that Kaiser never claimed any of those phantom funds as "back pay", and*
2. *All of Kaiser's 2005-06 pre-Hawai'i closing receipts, which should be on credit card (at least the lion's share).*

Kaiser will not and cannot represent that any of the funds are for "back pay", nor are any of the funds for "expenses". Kaiser stole his friends & family money. That is a fact he is still trying to avoid today by fraudulently alleging he now owns Baja Ventures 2006.

**Kaiser's own best friend refutes another Kaiser trial lie about a "confrontation" meeting and the 2005 Hawai'i funds...**

John Kaiser was a Hawai'i partner (without a capital investment) once he was re-paid his initial \$1,000 deposit from 2002. Kaiser's best friend and Hawai'i COO, Chris Manfredi, confirmed this to the FBI during Manfredi's October 12, 2010 proffer [3500-CM-2-r at 2]; also specifically refuting any alleged "confrontation" meeting in 2006 per Kaiser's fabrication in 2015 (Tr.983). Kaiser gave testimony in 2015 that in 2005, Kenner called him and requested a loan for the Hawai'i project (Tr.975-976). Kaiser obliged, funded the deal with \$1 million he solicited from his friends & family deposits, and voluntarily affirmed the deal to the 2009 arbitration panel, as follows:

**Kaiser testimony to the 2009 arbitration panel:**

*Q: Tell us what your experience was with respect to that money right at the point there was a decision to start loaning money to Mr. – that Mr. Kenner had made a decision to start loaning some of that investor money to Mr. Jowdy?*

*A [John Kaiser]: ...So if we had some funds that were – that was stagnant and that warrant purchasing land, we would utilize it for a loan, so we actually made some money off if it.*

*Q: Was Mr. Jowdy at that time someone that appeared credible to you?*

A [John Kaiser]: Well, the first thing, Mr. Kenner told me that he was, and I met him a couple of times.<sup>5</sup> He seemed – a big thing it was 15 percent interest rate, and I thought it was a good move.

Q: So at the time was there any representation about getting paid back this money when the Cabo deal closed?

A [John Kaiser]: It was supposed to be a short-term loan. I thought it was three to six months<sup>6</sup>, because I had also raised some other funds from family and friends that were getting a little antsy about it.

Q: At the time this money was lent to Mr. Jowdy...did anybody anticipate he wasn't going to pay you back when the Cabo deal closed, the Lehman Cabo deal?

A [John Kaiser]: No. Otherwise, I wouldn't have lent it. I wouldn't want to go down that route.

Q: When you made the decision – or when you were made aware that some of this money was going to be lent, rather than sitting idle in an account, at 15 percent, did you know there were some risks?

A [John Kaiser]: At the 15 percent – actually, the loans, I didn't think they were going to be – to me it wasn't a risky loan...but the loans -- even the investors I brought in – I said. Listen. This guy – I gave him the whole story of Ken Jowdy back by land. It's good. Better than your money sitting somewhere.

During the 2015 trial – Kaiser tried to un-explain his clear and convincing 2009 testimony with a virtual “word vomit” (Tr.1107) (See Document 501 -- Memorandum and Order [“M&O”] at 91):

Q: Well, you know, sir, for a fact, do you not, that ~~Kenner~~ [sic] Jowdy requested and received a loan that at some point reached approximately \$5 million from Little Isle IV and Ula Makika where he was to repay that loan with 15 percent interest, correct?

MR. MISKIEWICZ: Objection; time frame.

MR. HALEY: At some point in time.

THE COURT: Overruled. You can answer.

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<sup>5</sup> Kaiser corroborated his October 19, 2010 FBI proffer comments [3500-JK-1-r] when he described five (5) independent face-to-face meetings with Jowdy about the Hawai'i loans; despite 2015 trial amnesia (a.k.a. *faulty memory, confusion and mistakes or CTE*).

<sup>6</sup> The six (6) months would have correctly placed the Mexico closing in February 2006 (which was the original closing date – until deferred one [1] additional month to March 26, 2006).

*A [John Kaiser]: When I testified at Owen Nolan, that's what I believed when I testified because as of 2006, Mr. Kenner had told me that when -- the same time he told me my money went to Mexico so post that I learned that.*

The Court referenced Kaiser's "word vomit", in its M&O (Document 501 at 91), as an excuse for why Kaiser was not aware at the time of his 2009 arbitration testimony – but nothing about what Kaiser said in this 2015 testimony, *supra*, was comprehensible.

- To the contrary, there was nothing ambiguous about Kaiser's voluntary testimony in 2009. It was clear. It was concise. He solicited his friends & family for the Jowdy 15% loans. It corroborated the actual facts in evidence from many of the Hawai'i investors about the Jowdy loan knowledge "as a group".<sup>7</sup> And --

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<sup>7</sup> See 2011 SDNY Grand Jury testimony from Hawai'i-Mexico investors, **Michael Peca**, **Darryl Sydor**, and **Turner Stevenson**. Stevenson summed up the decision to loan funds to Jowdy after the two (2) previous testimonies "as a group", as:

*Q: When you put up the \$100,000 for Hawai'i, did you have any understanding of whether the money could be used to pay for the Mexico project or was it just supposed to go to the Hawai'i project?*

*A [Stevenson]: In the beginning it was supposed to go to Hawai'i. Then I saw they needed, the group of us got together, we have this piece of land that's available for purchase in Mexico that we need to wait on or get funds on to transfer as a group like one big blanket to get money into Cabo and pay for that land to hold it until the loan came.*

*Q: So you are saying you agreed to transfer some of the money from the Hawai'i project to the Cabo project?*

*A [Stevenson]: I would say that, YES.*

*Q: Who made that decision?*

*A [Stevenson]: I think all of us as a group.*

*Q: What do you mean "as a group", who is the group?*

*A: All the guys who were invested in it.*

Peca confirmed the same to the SDNY Grand Jury:

*"That [Little Isle 4] capital account was loaned to Ken Jowdy, our business partner, so there is no need at the time to be worried about anything. The money was loaned to Ken Jowdy to basically help some of the purchase of the Cabo property so we can get the funding. And then it was supposed to be a short-term loan."*



it remains bulletproof – thus the failed incomprehensibility of Kaiser's attempt to re-write history and “*un-ring the bell*” for the government in 2015.

In 2012, Kaiser was hired by Jowdy and gave immediate perjured testimony in a Mexico court about his name being “*forged*” in order to assist Jowdy's dismissal of the \$1.6 million he stole from Jozef Stumpel and the Baja Ventures 2006 capital account deposits.<sup>8</sup>

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<sup>8</sup> Once hired by Jowdy in 2012 – Kaiser claimed that *his signature was forged* on his Mexico testimonial (adverse to Jowdy). As addressed by Kenner during forfeiture oral arguments – Kaiser gave testimony in Mexico, of his newly claimed forgery to support his brand-new boss' dismissal efforts versus Jozef Stumpel's \$1.6 million lawsuit (that Jowdy failed to register as part of Baja Ventures 2006's \$4.1 million capital account).

**Kaiser LIED to the EDNY prosecutors and thus the EDNY Court raising 18 U.S.C. 1001 issues ignored by the prosecutorial team and knowing FBI Agent – again...**

The US Attorney (Michiewicz) and FBI agent (Galioto) also represented this Mexico document to the EDNY COURT as another document containing an alleged Kaiser forged signature.

- *Unfortunately, the FBI recorded Bryan Berard in 2012. Berard confessed on the recording that he and Kaiser signed documents in the Mexico courthouse in the presence of their attorney and Robert Gaudet during a one-day trip from the USA to Cabo san Lucas to file their testimonial documents (paid for on Kenner's AMEX records to confirm).*

Clearly the FBI knew Kaiser was a habitual liar about his name being forged and ignored it to prosecute their forgery angle at trial against Kenner.

**Kaiser had the original “ink” documents (not just one) he alleged had his name forged on it – while Kenner possessed only the photocopied versions...**

The Court cannot overlook that sixteen (16) months after the government seized the photocopy versions of the Constantine 2004 and 2005 Hawai'i consulting agreements from Kenner's home in 2013 – **they received the actual “ink” versions of them from Kaiser.**

- *It is shocking that Kaiser claimed his name was forged on documents that he actually had at his home for a decade – since signing them – and the government still proffered it to the Court at trial (after knowing the Mexico forgery lies).*
  - *The FBI agent ignored Kaiser's exposed position -- because he needed to get Kenner convicted – as Jowdy's scapegoat.*
- Ironically, these “ink” copies from Kaiser appeared at the same desperate time the FBI agent had a Confidential Informant wear a wire on Kenner at the Queens Private Detention Center, trying to solicit a “*Murder-for-hire*” plot just a month before the start of the 2015 trial. Kenner informed his trial attorney of the suspicious activity, but Kenner's trial counsel refused to alert the 2015 trial court.



- The FBI recorded Bryan Berard in 2012. Berard admitted on a FBI recording that he and Kaiser “**did sign**” the said “forgery”, further exposing Kaiser as a known liar about his name being forged (*perhaps learned from Jowdy and Harvey’s identical frauds of false forgery claims*).
  - All of the Kaiser and Berard “forgery” claims began after they joined “Team Jowdy” in Mexico in 2012.

**The government ignored the impeached testimony of Michael Peca’s loan knowledge from trial to maintain that some portion of the “group” that approved the Hawai’i loans to Jowdy (corroborated by three [3] independent SDNY Grand Jury testimonies) did not know about the loans...**

The government tried to express the same “*no loan knowledge by anyone*” refrain during their oral argument rebuttal. They claimed, “*Well, the investors did testify at trial that they did not know about the loans*”.

- The rebuttal proffer was in spite of Peca’s 2015 self-impeaching testimony at trial even after Peca confirmed he really did “*know about*” and “*approve*” the Hawai’i loans to Jowdy just like he told the SDNY Grand Jury four (4) years earlier and acknowledge by the Court’s M&O (*Document 501*).

Kaiser now claims after being fired by Jowdy that Jowdy was “*stealing funds with Kenner*”. Kaiser clearly does not understand that Kenner received none of the funds that were loaned personally to Jowdy from the Hawaii partners.

- This is the same Jowdy loan Kaiser voluntarily confirmed to the 2009 arbitration panel he was 100% aware of and solicited friends & family funds to participate, *supra*.

**Kaiser is NOT a victim of Kenner; just the opposite.**

- **Kaiser attempts to introduce another fraud of his in 2019 to the EDNY...**

**Kenner is a victim of Kaiser.** The bank records prove all of it; without vagueness.

In the face of the empirical evidence, Kaiser claims in his 2019 letter that he has a “*transfer document*” from Jowdy and Najam to transfer Kenner’s Baja Ventures 2006 LLC ownership. It is another fraud Jowdy and Kaiser tried to contrive for Kaiser as a reward for participating in their “*get rid of Kenner*” plan with FBI Agent Galioto.

Jowdy and Najam have no standing to authorize such a transfer. They are not a party to Kenner’s LLC (Baja Ventures 2006). In addition, Kaiser is relying on his forged and fabricated documents that “*Jowdy approved*”; the same Jowdy he now calls a fraud – again after being fired (*Tr.1228-1236*).<sup>9</sup>

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<sup>9</sup> Kaiser denied calling Jowdy a "thief" during his trial testimony, years before he went to work for him. Kaiser absurdly alleged (in 2015) that he was at the 2010 private California mediation between the Hawai'i-Mexico parties and Jowdy for the lawsuits that Ronald Richards already filed. *Kaiser claimed he was not there representing any parties; he was there on his own* (however that is possible at a private mediation session -- and Kaiser a non-party) *to claim that he was not advocating for the hockey players – and did not think Jowdy stole any money. CTE? Who would have let him in the door?*

*A [Kaiser]: I stood up and said, I am not Mr. Constantine. I told him about my background, and I'm certainly not like him, and that we're here just to try to figure it out and the last thing anyone needed was a lawsuit*

- Please note that Kaiser's comment was after four (4) lawsuits were already filed and active in the USA and Mexico at that time.

*Q. So you took an active role, correct?*

*A [Kaiser]: Yeah. The other side [Jowdy] wasn't there. It was just, like I said, the judge, the hockey players, Mr. Kenner, Mr. Constantine.*

*Q. Tell us the sides. There's Jowdy and his people, and there's you, Mr. Constantine, Mr. Kenner and all of the hockey players; is that correct?*

*A [Kaiser]: Yes.*

***Q. So there's two sides to this mediation. You are on the side of the hockey players, the same side Mr. Constantine was on; is that right?***

***A [Kaiser]: No. I told the judge I'm not -- I have nothing to do with Mr. Constantine.***

- Please note that this is within weeks of Privitello and Kaiser's December 2009, \$400,000 that Kaiser and Privitello independently wired to Constantine and Eufora – **but now Kaiser has nothing to do with Constantine?** It is more irreconcilable testimony.

***Q. Well, were you there in any capacity to insure that Mr. Jowdy accounted for the monies that everybody had believed he had taken?***

*MR. MISKIEWICZ: Objection.*

*THE COURT: Sustained as to form.*

*BY MR. LARUSSO:*

***Q. Mr. Kaiser, were you there because you felt that Mr. Kaiser had stolen money?***

***A [Kaiser]: I didn't steal money.***

***Q. I'm sorry. Mr. Jowdy had stolen money?***

***A [Kaiser]: No.***

Even if the Baja Ventures 2006 fabricated and forged transfer documents were real (**which they are not**), Kaiser's friends & family received \$1.176 million from Na'alehu Ventures 2006 to repay them thru Kaiser in August 2006, per Kaiser's instructions. **Kenner had no contact with any of the Kaiser friends & family.**

The underlying additional "*expenses*" on the fabricated 20008 agreement (\$455,000) is also bogus. Kaiser cannot present credit card receipts (or the equivalent) to substantiate that amount or anything close. It is another fraud on this EDNY Court. **Kenner renews his request to have the Court subpoena:**

1. *Kaiser's 2007-08 "expenses" and receipts to verify the \$455,000 he allegedly paid for Kenner Arizona renovation (represented on the 2008 document).*

The third (3<sup>rd</sup>) amount on the fabricated 2006 and 2008 agreements was already part and parcel to another 2006 agreement signed by Kaiser and Kenner just days prior in 2006 (in evidence). It is illogical that Kenner would double guarantee the \$360,000. **Either way**, Kaiser received the funds well in excess of his forged and fabricated agreements (**thru his own future court admissions and bank records**). Thus, the fake agreements are irrelevant (even if they were real). That is the most illogical part of Kaiser's ever-changing alliances and alibis.

- The Baja Ventures 2006 theft from Kenner is Kaiser's last "plan" to avoid the inevitable litigation from his friends & family or criminal prosecution by the FBI (while now adverse to Jowdy). Unless the statutes of limitations are on his side for Kaiser's myriad of documented thefts – including from current and former law enforcement persons -- Kaiser's plan to blame his thefts on Kenner is obviously a desperate, last effort to avoid prosecution.

**Kaiser claims all \$30 million Jowdy received should be punished...**

Kaiser's representation of "*Jowdy and Kenner worked hand-in-hand on buying a number of land development projects with victims' money*" misrepresents the significant facts that Kenner was a Business Manager and Jowdy, independently, was a third (3<sup>rd</sup>) party developer who received funds directly from Kenner clients for their respective equity investments. Kenner was never in a control position with any of the Jowdy developments or underlying frauds. Nevertheless, **Kenner was never a beneficiary of any single Jowdy fraud** regardless of the Kaiser grandstanding, without any of the foundational information. Kenner was a victim of millions of Jowdy frauds, like his clients. The records in evidence prove it. It is this uninformed rhetoric that the FBI agent (Galimoto) continues to promote in order to confuse the Hawai'i-Mexico investors; distracting them from the now-shocking Kaiser representations.

**Kenner never received a benefit from the 2004 Hawai'i-Jowdy loan or any Jowdy development project. Only Jowdy did.** That is precisely why it was a documented loan to Jowdy; personally, as the loan agreement details and all operating agreements represent.

Kaiser does outline that funds from Kenner and Kenner investors were “*used by Jowdy to acquire his interest in Diamante (not Kenner)*”. So, based on Kaiser’s “inside” knowledge, what could possibly be forfeitable in the DCSL project, considering all of the investors’ equity deposits are accounted for as “clean” funds [\$4.1 million from Baja Ventures 2006, and \$2.3 million from CSL Properties – *more than Jowdy and Najam registered*]?

The Kenner and Kenner investors’ *intended* equity deposits represent 96.6% of the \$6,625,000 down payment. Jowdy sources another \$100,000 from Lehman Brothers’ lender, Masood Bhatti (Somerset Properties) – bringing the total to 98.1% of the deposit funds. Millions of additional dollars, **not from the Hawai’i project loan**, are unaccounted for by Jowdy, in spite of his confirmed acquisition of the funds (which remain unpaid and undocumented today by Jowdy and his cabal). Thus, any “other” funds could have been the source of the remaining \$125,000. It was an insignificant amount in the DCSL deal.

Nevertheless, Michael Peca told the SDNY Grand Jury that he *expected* his entire \$1,875,000 Hawai’i capital contribution to *all* go to Jowdy to help purchase the Cabo project, *infra*. The Court’s M&O (*Document 501*) confirmed that Peca IMPEACHED himself on cross examination and confessed to knowing about the Jowdy loans, just as he told the 2011 SDNY Grand Jury, disqualifying Peca (like so many other Hawai’i investors) from being a victim of conspiracy by concealment with the funds that Jowdy acquired thru the 2004 Hawai’i-Jowdy loan agreement.

[Michael Peca – 2011 SDNY Grand Jury]

**“That [Little Isle 4] capital account was loaned to Ken Jowdy, our business partner, so there is no need at the time to be worried about anything. The money was loaned to Ken Jowdy to basically help some of the purchase of the Cabo property so we can get the funding. And then it was supposed to be a short-term loan.”**

Kaiser finishes one of his rants by claiming that “*I believe Jowdy received upwards of \$30 million from Kenner over the years and spent most of the money on wasted schemes and projects*”.

**Kaiser highlights that:**

- **Kenner did not spend any of that money.**
- Jowdy received the investment and loan funds from 2002-2006.
  - In 2007, Kenner discovered the Jowdy “**ill intentions**” (a.k.a. criminal activity) and confronted Jowdy to resign and repay.
- Kenner turned down Jowdy’s “*documented bribe to just go along*”.
  - Kenner **DECLINED**, yet

- Kaiser took a job from Jowdy (with Berard) in 2012 and was paid **VERY** handsomely for five (5) years.
  - Kaiser only “blew the whistle” on Jowdy after he was fired, confirming his own complicit activity in the Jowdy long-term conspiracy and RICO activity, ending only as a result of Jowdy’s criminal paranoia.

Why isn’t the FBI agent helping Kaiser now, when he relied so heavily on Kaiser and Berard to indict Kenner, hold him without bail (as Confidential Informants), and convict Kenner?

- It is because the real FBI allegiance is to Jowdy’s ultimate protection and his well-connected legal team. **It is a telling question underlying the entire prosecution, which now requires independent investigation in its own right.**
  - **Kaiser’s revelations highlight the clear prosecutorial conspiracy that the AUSAs scoffed at during trial as impossible.<sup>10</sup>**

Kaiser has been working hand-in-hand with the FBI since 2012 against Kenner to protect Jowdy (despite his contradicting, pro-Kenner October 2010 FBI proffer – 3500-*JK-1-r*), **so why is Kaiser writing to the Court?** Kaiser should be complaining to the FBI (like he did regarding Kenner when working for Jowdy) or any other oversight DOJ agency.

Kenner advocates, consistent with his last decade-plus to investigate everything about Jowdy and **follow the money; follow all of the money.** Kenner has presented all of the information to the government and the Court with the government’s own evidence (for the Hawai’i loans to Jowdy, the GSF funds, and the Eufora private stock sales that were vetted by the investors’ own high-end attorneys).

All of Kenner’s documented disclosures have confirmed tens of millions of Jowdy embezzlements – ***with no benefit to Kenner.*** The government documents confirm no GSF funds were misappropriated (per the Gonchar-Constantine “*side-deal*”). And -- the government documents confirm Kenner received only loan repayments from Gaarn and Constantine (fully documented short-term loans), as a result of their private stock sales; *fully transparent to all investors and vetted by their attorneys.*

As an *ex post facto* Good Samaritan, Kaiser now represents all of the Jowdy crimes to the Court – ***reversing his trial testimony.*** Kaiser cannot decide whose team he is on,

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<sup>10</sup> Tr.5048 – [Michiewicz]

*“But my question to you is, in sum and substance, you are accusing the FBI of having diverted attention away from Mr. Jowdy and focused on you because Louie Freeh, the former director of the FBI, the director who supported the impeachment of the former President of the United States, decided it was more important to save Ken Jowdy and wanted this investigation to go after you. Is that your testimony?”*

while trying to cover-up for his repeated, Jowdy-like, thefts from his own friends & family.

**Now Kaiser confirms it as well – contradicting his 2015 trial testimony...**

It is irrefutable that Jowdy has robbed Kenner and Kenner investors, lied to multiple Federal and State jurisdictions in the USA (*and Mexico*), and made repeated and provably false statements to the FBI, and this EDNY Court [*See December 2016 Jowdy declaration*<sup>11</sup>], and the FBI refuses to investigate “WHERE THE MONEY WENT”.

**Kaiser reversed his 2015 trial testimony – and confirmed it...**

Now, Jowdy's 2012-2017 inside guy to “*get rid of Kenner*” has turned on Jowdy, stunning the EDNY Court with statements about Jowdy that confirm Kenner was truthful at all times and in every representation of Jowdy, the transparent funds Jowdy borrowed, and the underlying “*blind eye*” of the FBI.

- *Otherwise, Kaiser would be working hand-in-hand right now with FBI case agent Galioto and not begging the Court to “help”.*

**Kaiser makes a series of false claims about Kenner – fully refuted by documents and bank records in evidence...**

Kaiser's other claims about Kenner “giving” Jowdy a 50% interest in Cabo is proven false by Jowdy's own February 19, 2006 (with Kenner and Najam) thru February 22, 2206 (with Bhatti and Najam) emails in the government's possession. **Kaiser is**

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<sup>11</sup> In spite of Jowdy's attorneys' self-serving and inaccurate claims of no wrongdoings (*Document 611*), Jowdy confirmed in his January 2010 California deposition that he and his Mexico attorneys had filed criminal charges in Mexico versus Kenner for claiming that the funds Jowdy received in Mexico “*were loans*”. As Jowdy and the government's revisionary history (*post-trial – and in the 2010 Jowdy FBI proffers proved*), the transfers “*were loans*” ...

Jowdy and his attorney, Tom Harvey, originated these false “*loans*” claims, in their initial April 2009 EXTORTION email to Kenner, threatening jail time at the hands of the FBI to Kenner, Manfredi, Kaiser, Gaudet (*and anyone else supporting Kenner and Kenner investors*), because “*Kenner was referring to the funds Jowdy received as loans!*” [All in evidence].

Jowdy's attorneys in the 2008-09 Arizona case followed their bullying, “above the law” tactics and threatened the Arizona attorneys representing the Hawai'i investors when specifically confirming they would become criminally complicit with Kenner in September 2009 for calling the funds Jowdy received “*loans*”, if they chose to continue representing the Hawai'i partners and Kenner (in a written letter).

- It was intimidating (*with the well-represented power of Louis Freeh behind them*), but fully telling, as their well-executed, 10-year plan to-date, with FBI Agent Galioto's assistance, continues.



**clearly unaware of the evidence**, which has not been shared by the FBI agent, who continues to benefit from the investors' confusion?

- **Kaiser is not being referred to as an investor.**

Jowdy actually stole 53% of the DCSL project at the closing – thus even Jowdy's alleged 50-50-deal fabrication fails at face value.

**Kaiser also references some \$2.5 million transfer for 5% of Diamante del Mar "worthless" equity deal between Kenner and Jowdy in February 2006...**

- **That transfer event never happened.**

Jowdy lied about the transfer deal in his 2016 (and re-submitted 2019 declaration to the EDNY – availing himself to 18 U.S.C. 1001 issues in the EDNY – if the FBI &/or AUSA are interested) to cover-up for his theft.

- **The evidence proves the event never happened.**

Kaiser wants to cry about the Jowdy LIE, but the essential evidence in the government's hands refutes the LIE, thus the Kaiser statements are meaningless and foundationless about a transaction that clearly never happened. As usual, Kaiser is under-informed.

- *Jowdy's own June 19, 2005 email to Kenner fully exonerates Kenner having any participation in a February 2006 "swap" as described by Kaiser in his February 2019 letter submission and the Jowdy declaration.*
- *The "swap" was simply another ex post facto attempted cover-up by Jowdy, which clearly confused Kaiser as another unknowing party – yet allowed to fester by the knowing FBI agent in the case.*
- *Jowdy's own accounting confirms Kenner's owned a full 10% DDM ownership eight (8) months before the FAKE DEAL Jowdy describes in Footnote 4 of Jowdy's December 2016 declaration to the EDNY (Document 611-1). The FBI and AUSA continue to ignore Jowdy's statements that were made "under penalty of perjury".*

**The pending Fatico hearing will outline the Kaiser repayment lies with bank records, thus irrefutable...**

In fact, based on Kaiser's frauds and perjury to the 2015 trial court, Kenner will outline the LIES totaling millions overpaid during the upcoming Fatico hearing; confirming that Kaiser and his mother (Ethel Kaiser) are not Kenner victims. Ethel is only a victim of her son and Bryan Berard's documented diversions from her (and still unknown to her).

- Kenner expects John Kaiser to attend, as well as his friends & family who think the Hawai'i partners did not repay their funds, including Frank Sconzo, Willie Krueger, Robert Rizzi (law enforcement), Theodore Hughes (law enforcement), Keith Kaiser, and Ethel Kaiser.

**Kaiser claims Jowdy refuses to repay investors who called him a crook...**



Jowdy is a proven criminal. He is simply not prosecuted as a favor to someone at this point, but the "inside" Kaiser revisionary exposé and offer to testify to "someone" must be enough to re-open many of Kaiser's PERJURIOUS statements from trial in 2015 and evaluate their prejudicial damage.

**Kaiser new evidence confirms that Jowdy is NOT a victim...**

The Kaiser letter also introduces the government's known misrepresentations at trial, laying Jowdy out as a victim from their opening remarks; fully prejudicing Kenner with prejudicial lies (Tr.31):

[Komatireddy opening remarks]:

***"This is the fraud where the defendants lie to the investors about who's stealing from them, and find a way to steal from them all over again. The defendants tell the investors that a guy in Mexico named Ken Jowdy, stole their money and ran away with it, and they tell investors that they are raising money for a legal defense fund to pay an attorney to go fight Jowdy***

*Thinking that this is the last hope to get their money back, the investors give more than a million dollars to the defendants [GSF], which they are told will be used to fight Jowdy. But Kenner and Constantine take that money and divert it back to themselves and their own personal projects."*

**The government called Kenner a "liar" repeatedly at trial for making the same claims that Kaiser now confirms to the EDNY Court...**

Kaiser's new revelations corroborate:

1. Berard's 2010 texts about Jowdy being a fraud to the NY Daily News writer just before Berard "looked the other way" and took the job from Jowdy,
2. Seventeen (17) pre-trial, independent "under oath" recollections of the "known Jowdy loans",
3. Three (3) independent civil USA lawsuits [with 19 Hawai'i-Mexico plaintiffs] that confirmed the same, and
4. Three (3) independent 2011 SDNY Grand Jury testimonies; Michael Peca, Darryl Sydor, and Turner Stevenson...

**Certainly none of them implicate Kenner in any concealment activities.**

Kaiser letter exploits many things, some of which Kaiser is still lacking knowledge that the government possesses. Perhaps, that is not Kaiser's fault. But:

1. **Kaiser knows that he is not owed funds from Kenner and never has been,**
2. **Kaiser now confirms Jowdy is a fraud, and**
3. **The FBI will not assist his prosecution.**

If Kaiser is confused at all, the government has 100% of the banking records to refute Kaiser's position (including trial claims that the unpaid Kaiser investment in California are the underlying reasons for Counts 2 - 3 - and 4). In contradiction to the evidence in the government's hands and Kaiser's real knowledge (notwithstanding CTE issues), the government used Kaiser's *cooperation* or *naivety* to allege Kaiser was owed money from Hawai'i and California.

[AUSA Michiewicz – Tr.1020]

*"The reason some of those wire transfers go to Mr. Kaiser and some of these are the substantive wire fraud counts two, three, four, the reason they go to Mr. Kaiser is because he has no money to complete a subsequent project. He's still owed money from this Hermosa Beach project and, again, Mr. Kenner is controlling the funds."*

**Now, the 2015 trial appears to have a giant taint on it...**

- Kaiser's 2019 letter raises far more questions than it creates answers.

Now, after Kaiser was FIRED by Jowdy based on Jowdy's alleged paranoia and consistent with sociopath criminals, Kaiser is not being paid by his thieving compadre. He wants to expose Jowdy's criminal underpinnings that were the basis for providing him with a huge salary for five (5) years, when the crimes were easy to ignore as a co-conspirator.

**Kaiser has enormous 18 U.S.C. 1001 issues to answer for...**

But, perhaps the most shocking item Kaiser's letter raises, is how is Kaiser "**again**" not "*bringing to a close a long and difficult investigation that relied heavily on the determination of former Ranger and Islander Bryan Berard and New York and Long Island police officer, John Kaiser, along with NY-based FBI agent Matt Galioto*" regarding the Jowdy allegations – this time?

- This quote (from the November 13, 2013 arrest day NY Daily News article) was the basis for the Kenner Indictment and arrest in 2013 with Kaiser and Berard working hand-in-hand with Jowdy in Mexico, Jowdy's attorneys, and FBI Agent Galioto – for years.

**Jowdy is untouchable?**

Kaiser should not be writing to the Court seeking help. He should have a "hot line" to the FBI case agent. But, now with Jowdy as the target of Kaiser's criminal assertions (at a minimum), it is difficult to understand how Kaiser's "*determination*" is not being embraced with the full force of the FBI to indict Jowdy and his obvious cabal members, unless the pay-for-play protectionism Kenner has boldly pronounced at every turn

(which included Kaiser and Berard) carries some conspiratorial risks of self-incrimination for the same people who should be charged with investigating him.

- **They have the evidence and Kaiser's corroboration, but someone is no longer assisting in the criminal prosecution.**

**"Why" is the question?**

**Kaiser claimed he saved investors from being "victims" again...**

Ironically, Kaiser was the person who told Eufora investors (including Privitello) to *"not sell"* their shares in 2010 during the Giuliani Group investigation of "everything Eufora". Kaiser's testimony (Tr.1065-1066) confirmed that he singlehandedly convinced multiple Eufora investors to not take a payout/buyout of their stock (ironically because of the METABANK deal he personally observed; not Kenner as alleged at trial by the government) (Tr.5961). Now – the government claims the Eufora Company is worthless. It does not comport. Perhaps, Kaiser is to blame for his "heroism", again. Many, if not all, of the Eufora investors could have received a buyout had it not been for Kaiser's opinion that contradicts the government's "worthless" argument ten (10) years after Kaiser foiled the buyout offers; *not Kenner*.

Now, Kaiser is claiming that even though he was working inside Jowdy's operation [2012-2017], not as a Confidential Informant for the government, but as a knowing and conspiratorial employee (until he was **fired**), he ignored the Jowdy frauds for his personal benefit. Kaiser tried during his employment to convince investors who are pleading to receive anything from Jowdy's two (2) decades of uncharged criminal activity to *"not sell"* their investment interest; *again*. It is another shocking position by Kaiser. Investors are sixteen (16) years into the Jowdy investment farces, and a Jowdy co-conspirator [Kaiser] was informing them while collecting his grand paychecks that they *"should not take their money through a voluntary buyout"*. Kaiser's own presentation of the Jowdy quote contradicts his advice to people who want the Jowdy crimes to end, as follows (Document 628 at 4):

*"The hockey guys will never see a dime' because they said he was a crook".<sup>12</sup>*

Kaiser is two for two (2-for-2) with his *"don't sell"* advocacy. Yet, the investors want money back. How can Kenner (or Constantine) be held accountable for Kaiser's independent input to the investors to not take their money? Kenner did not tell them to *"stick it out"*. Kaiser did, **twice**. Perhaps, Kaiser's bad advice is to blame for the financial situation of investors who want their money back and are frustrated.

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<sup>12</sup> Jowdy's *"never get a dime back"* statement echoes his January 2010 California deposition statements – which John Kaiser attended.

**Kaiser's shocking position about Jowdy occurs after Kenner turned down the 2007 bribes...**

Kenner turned down Jowdy's 2007 bribes, documented by Jowdy in his January 2010 deposition. Kenner immediately notified the Hawai'i-Mexico investors that Jowdy had been defrauding them and tried to bribe him in 2007 to "*just go along*". Immediately, Kenner and Kenner investors began suing Jowdy in Mexico and negotiating with him in the USA (thru Constantine – as a mutually chosen litigator, primarily because Jowdy would speak with Constantine, and not Kenner). The government and Kaiser overlook that the Jowdy "*payoffs*" to Kenner would have been the "*fruit of the crime*", if Kenner were complicit with Jowdy.

- Clearly – Kenner was not "with Jowdy", regardless of Kaiser's 2019 contentions.

The Hawai'i project completed its financing in August 2006. Kenner left 100% of his capital in the Hawai'i deal in lieu of a \$300,000 to 400,000 payout he was entitled to. Then, months later, Kenner turned down the Jowdy "bribes". Again, Kenner represents himself as the worst fraudster in history; not taking any of the proverbial "*fruits*".

Immediately, Kenner led the 2007 whistleblowing campaign against all things Jowdy and exposed every fraud Kenner discovered regarding Jowdy and his cabal (including Tom Harvey and Bill Najam, at the time). Never once did Kenner reap any benefit from the Hawai'i loans to Jowdy. Every Hawai'i or Mexico partner who was asked about them pre-trial (2015) acknowledged their knowledge of the loans. Yet, Kaiser now claims after five (5) years of Jowdy "payments" to him to "go along", Kaiser shocks the conscience and reverses his pro-government and Jowdy supporting testimony from 2015.

- Four (4) years later (2019), Kaiser's scandalous revelations confirm that he grossly misrepresented his knowledge to the 2015 Court and jury. The effects on the trial, with Kaiser's now certain perjury, can only be another "but for" issue that the Court must wrangle with to determine "how many" "but for" issues are no longer harmless; but now prejudicial.

Had Kaiser given this information to the Court and jury in 2015, confirming that Jowdy was robbing everyone, and affirming that he learned about it as a Jowdy insider from 2012-2015 [3 years working for Jowdy], the jury might not have convicted. See *United States v. Polisi*, 416 F.2d 573 (2d Cir 1969) ("If conviction is shown to be based even in part upon perjured testimony, court will not inquire into precise effect of perjury, but will order a new trial if without perjury jury might not have convicted").

Specifically, the Cabo san Lucas equity deposits from Kenner and Kenner investors have been proven to be "**clean**" funds (by the government's own accounting):

- **Baja Ventures 2006** [\$4.1 million – even with Jowdy's fraudulent \$2.5 mis-registration in its capital account] and
- **CSL Properties** [\$2.3 million – even with Jowdy's fraudulent \$2.0 mis-registration in its capital account].

No Hawai'i funds from the personal loan to Jowdy are credited to any capital account for Baja Ventures 2006 or CSL Properties; and certainly “**not**” as proffered during the government’s summation and rebuttal summation. There were “no stolen funds” by Kenner that contributed to Baja Ventures 2006’s acquisition of any equity at DCSL. The government’s own accounting records prove it. (*See Government Forfeiture-36*).

Kaiser’s shocking 2019 letter, refuting his own trial testimony, shocks the integrity of the government basic trial theories and demands a re-evaluation of the foundation of the government’s case. (*Tr.31*) – and begs the question:

“What premeditated prejudice did Kaiser contrive himself versus in concert with a knowing prosecutorial team who led him elegantly thru his direct testimony Q&A?”

How will the Court reconcile this new evidence?

Sincerely,

/s/

Philip A. Kenner